

- (a) the decision not to extend time to file a civil appeal;¹ and
- (b) the refusal of an application to recall that judgment.²

Background³

[2] Mr Haines and Mr Memelink had been involved in various commercial dealings between 2016 and 2018, when relations soured and they became embroiled in litigation.

[3] Three loans were at the centre of the proceedings owed to two finance companies: Fico Finance and Bright Enterprise Holdings Ltd (Bright). The principal debtors under the loans were the applicants but the loans were guaranteed by Mr Haines and Mr Memelink or entities associated with them, including the Link Trust (Mr Memelink's family trust). The applicants defaulted on the loans and the Link Trust repaid them.

[4] In 2020, the Link Trust issued proceedings to recover the amount of the loan repayments and applied for summary judgment. The applicants opposed summary judgment and filed a counterclaim pleading breach of contract and tortious interference in contractual relations. The Link Trust applied to strike out the counterclaim.

[5] The issue in the High Court on the summary judgment was whether the finance companies had validly assigned their loan agreements to the Link Trust, thus rendering the applicants liable to reimburse the Link Trust. The application for summary judgment was granted by the High Court on 3 August 2021 (the liability judgment).⁴ The Judge directed a trial to deal with quantum and with the counterclaim. The applicants filed an application for an extension of time to appeal against the liability judgment on 22 December 2023.

¹ *Haines v Memelink* [2024] NZCA 245 (French and Mallon JJ) [First CA judgment].

² *Haines v Memelink* [2024] NZCA 374 (French and Mallon JJ) [CA recall judgment].

³ For a fuller background see: First CA judgment, above n 1, at [4]–[17].

⁴ *Memelink v Haines* [2021] NZHC 1992 (Grice J) at [187].

[6] On 19 March 2024 a judgment on quantum was issued in favour of the Link Trust.⁵ An appeal against that judgment is to be heard in the Court of Appeal on 24 March 2025.

Court of Appeal judgments

[7] In deciding on the application for an extension of time to appeal against the liability judgment, the Court of Appeal applied the criteria in this Court’s decision in *Almond v Read*.⁶

[8] The Court of Appeal noted that the delay had been more than two years.⁷ It found there was no adequate explanation for the delay. The Court rejected the reliance on belated discovery of documents and in particular on two letters disclosed by the receivers in September 2023 and an affidavit sworn on 13 December 2023 by the managing director of Bright.⁸ The Court held that the Bright loan documents were part of the evidence relied on by the High Court in the liability judgment, and the letters were “far from being a smoking gun”.⁹ The Court did not consider the conduct of any of the parties to be disentitling.¹⁰ It accepted that the delay had caused prejudice and in particular to the Link Trust’s creditors.¹¹ While the issues are of importance to Mr Haines and his interests, the Court said there are no issues of general or public importance.¹² While any assessment of the merits would need a full hearing, the Court considered that the proposed appeal appeared weak.¹³

⁵ *Memelink v Haines* [2024] NZHC 588. We note that the Link Trust had been placed in receivership in May 2022.

⁶ First CA judgment, above n 1, at [23], citing *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].

⁷ At [26].

⁸ At [31]. For details see at [18]–[22].

⁹ At [31].

¹⁰ At [32]–[34].

¹¹ At [35].

¹² At [36].

¹³ At [45].

[9] The Court concluded:

[46] The fact that the merits are weak would not be sufficient to decline an extension of time but, when combined with the inordinate delay and the prejudice to third parties, we are not persuaded it would be in the interests of justice to grant an extension of time.

[10] In declining the application for recall of its judgment, the Court held all three grounds advanced to be without merit.¹⁴ The Court said that the applicants fell well short of the recognised criteria for the recall of a judgment.¹⁵

Grounds of proposed appeal

[11] The applicants maintain that summary judgment should have been denied, including because of the non-disclosure of key documents. In terms of the recall application, the applicants say that they were given no right to be heard.

[12] The receivers of the Link Trust submit that the grounds the applicants wish to raise overlap with the grounds of appeal against the High Court judgment on quantum to be heard in March 2025. They submit that it is not in the interests of justice to hear the proposed appeals before that appeal. In any event, it is submitted that the Court of Appeal applied established principles to both the extension application and the recall application.

Our assessment

[13] The matters the applicants wish to raise with regard to both proposed appeals are related to the particular circumstances of this case and raise no issue of general or public importance.¹⁶ Nor does anything raised suggest the Court of Appeal was in error in its assessment, and therefore there is no risk of a miscarriage of justice.¹⁷ It is also significant that many of the proposed grounds are to be raised in the appeal to the Court of Appeal against the judgment on quantum.

¹⁴ CA recall judgment, above n 2, at [3]–[5].

¹⁵ At [6].

¹⁶ Senior Courts Act 2016, s 74(2)(a).

¹⁷ Section s 74(2)(b). As to what constitutes a miscarriage in civil cases see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

Result

[14] The application for leave to appeal is dismissed.

[15] The applicants must pay the respondents one set of costs of \$2,500.

Solicitors:

J P Dallas, Wellington for First, Second and Third Applicants

Gibson Sheat, Wellington for Respondents